APPROVED MARCH 8, 2011

State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
February 8, 2011 Meeting

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137 SHS, 161 Capitol Street
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BOARD MEMBERS PRESENT
Sheridan R. Oldham, M.D., Chairman
Gary R. Hatfield, M.D., Board Secretary
Meg Baxter
Cheryl Clukey
David H. Dumont, M.D.
Maroulla Gleaton, M.D.
David D. Jones, M.D.
David Nyberg, Ph.D.

Dr. Dreher was excused.

BOARD STAFF PRESENT
Randal C. Manning, Executive Director
Mark C. Cooper, M.D., Medical Director
Dan Sprague, Assistant Executive Director
Jean M. Greenwood, Board Coordinator
Tim Terranova, Consumer Assistant
Maria MacDonald, Board Investigator

ATTORNEY GENERAL'S OFFICE
Dennis Smith, Assistant Attorney General
Detective Peter Lizanecz

The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S.A. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S.A. § 1711-C.) The Board moved, seconded, and voted the following executive session times. During the public session portions of the meeting actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

PUBLIC SESSIONS	PURPOSE
9:07 a.m. – 9:15 a.m.	Call to Order/Agenda Amendments
10:06 a.m. – 10:07 a.m.	Public Session
10:15 a.m. - 10:16 a.m.	Public Session
11:04 a.m. – 11:04 a.m.	Public Session
11:21 a.m. – 11:22 a.m.	Public Session
12:21 p.m. – 12:23 p.m.	Motion – Informal Conference
1:02 p.m. - 1:03 p.m.	Public Session
1:27 p.m. – 2:00 p.m.	Motion – Informal Conference/Public Session
2:16 p.m. – 3:08 p.m.	Public Session
3:14 p.m. – 4:02 p.m.	Public Session/Adjournment

EXECUTIVE SESSION	
9:15 a.m. – 10:06 a.m.	Progress Reports and New Complaints
10:16 a.m. – 11:04 a.m.	New Complaints and Assessment & Direction
11:22 a.m. – 12:21 p.m.	Informal Conference
1:03 p.m. – 1:27 p.m.	Informal Conference

RECESS
10:07 a.m. – 10:15 a.m.
11:04 a.m. – 11:21 a.m.

12:23 p.m. – 1:02 p.m. (Noon meal)
2:00 p.m. – 2:16 p.m.
3:08 p.m. – 3:14 p.m.

I. CALL TO ORDER

Dr. Oldham called the meeting to order at 9:07 a.m. and welcomed the Board's new public member, Meg Baxter.

A. AMENDMENTS TO THE AGENDA

1. Amend off Section V. (A) CR 09-545 (INFORMAL CONFERENCE)
2. Amend to Section XIII. Secretary's Report (B)(7) Patrizia Riccardi, M.D.

B. SCHEDULED AGENDA ITEMS

V. INFORMAL CONFERENCE(S)
A. CR 09-545 Amended off the agenda.
B CR 10-049
C. CR 10-341
D. CR 10-144

II. PROGRESS REPORTS

1. CR 10-163

Dr. Gleaton moved to investigate further CR 10-163. Dr. Dumont seconded the motion, which passed 6-0-0-2 with Dr. Jones and Dr. Hatfield recused.

2. CR 10-275

Dr. Hatfield moved to dismiss CR 10-275. Dr. Gleaton seconded the motion, which passed unanimously.

The complainant feels that he did not receive the pain medication he required at an appointment to evaluate his chronic pain. The physician replies that non-narcotic pain relievers were available that had not yet been tried by the patient; however, the complainant refused to try these medications. A review of the medical records confirms the physician's treatment plan. It also documents that the complainant threatened this physician, as well as another practitioner at a separate appointment, with both a complaint to the Board as well as a lawsuit if he did not receive the narcotic pain-reliever he wanted.

3. CR 10-328

Ms. Clukey moved to dismiss CR 10-328. Dr. Gleaton seconded the motion, which passed unanimously.

The patient alleges the physician inappropriately discharged him from the Emergency Department (ED). He alleges he was told to stay in bed as he was unstable on his feet but was then discharged without an offer of assistance or a ride. The physician responds by saying that at the beginning of his evaluation in the ED, the patient's family or individuals knowing the patient were present and offered his medical history. The physician assumed his friends/family would offer transportation after his release. The physician was not present at the end of the case as his shift had ended.

4. INTENTIONALLY LEFT BLANK

5. COMPLAINT STATUS REORT (FYI)

6. CONSUMER ASSISTANT FEEDBACK (FYI)

7. REVIEW DRAFT LETTERS OF GUIDANCE

A. JAY C. SMITH, M.D. CR 09-498

Dr. Dumont moved to accept the letter of guidance in the matter of Jay C. Smith, M.D. (CR 09-498) as edited. Dr. Nyberg seconded the motion, which passed unanimously.

B. PETER H. ELIAS, M.D. CR 09-538

Dr. Jones moved to accept the letter of guidance in the matter of Peter H. Elias, M.D. (CR 09-538). Dr. Gleaton seconded the motion, which passed 7-0-0-1 with Dr. Hatfield recused.

C. CR 10-254

Dr. Hatfield moved to table approval of the Letter of Guidance in the matter of CR 10-254 and to reopen the complaint for further investigation based on the introduction of new evidence by the physician's legal counsel. Dr. Hatfield also moved to amend the January minutes to remove the physician's name. Dr. Gleaton seconded the motion, which passed unanimously.

D. BRIAN M. JUMPER, M.D. CR 10-277

Dr. Dumont moved to accept the Letter of Guidance in the matter of Brian M. Jumper, M.D. (CR 10-277). Dr. Jones seconded the motion, which passed 7-0-0-1 with Dr. Gleaton recused.

E. DEBRA SILKES, M.D. CR 10-458

Ms. Clukey moved to accept the Letter of Guidance in the matter of Debra Silkes, M.D. (CR 10-458). Dr. Jones seconded the motion, which passed unanimously.

III. NEW COMPLAINTS

8. CR 10-425

Dr. Dumont moved to dismiss CR 10-425. Ms. Baxter seconded the motion, which passed unanimously.

In this case the patient alleges she did not get help in making a referral to psychiatry and then was inappropriately terminated from the practice in question. Review of the records and of the physician's response shows a patient with an anxiety disorder and perhaps addiction issues who did not follow the practice's recommendations. The practice did not help arrange the psychiatry consultation because, as is the case with many mental health referrals, it is required for patients to schedule their own appointments. The practice did provide all of the information necessary for the patient to do this. The practice tried for 8 months to get the patient off benzodiazepines and to get her to see a psychiatrist. The practice and the physician were within their rights to terminate the patient after these efforts failed.

9. CR 10-431

Dr. Hatfield moved to investigate further CR 10-431. Dr. Jones seconded the motion, which passed unanimously.

10. CR 10-480

Dr. Hatfield moved to order an Informal Conference in the matter of CR 10-480. Dr. Jones seconded the motion, which passed unanimously.

11. CR 10-485

Dr. Oldham moved to dismiss CR 10-485. Dr. Dumont seconded the motion, which passed unanimously.

The patient complains that the surgeon performed his surgery poorly and did not respond appropriately to the patient's post-operative complaints. Review of the medical records shows appropriate medical decision making, and the informed consent covers the post-operative complications the patient experienced. The operative note describes extensive disease and standard operative technique. The surgeon appears to have treated the patient compassionately and was responsive to phone calls. Unfortunately, the patient did develop complications and sought additional care with other providers.

12. CR 10-601

Dr. Nyberg moved to investigate further CR 10-601 and order a 3286 examination. Dr. Hatfield seconded the motion, which passed unanimously.

13. CR 10-437

Dr. Oldham moved to dismiss CR 10-437. Dr. Dumont seconded the motion, which passed unanimously.

The patient and her son complain that her surgery was performed in a negligent manner, and that post-operative complications were not diagnosed in a timely manner. Review of the medical records shows appropriate medical decision making and informed consent. The surgery was converted from a laparoscopic procedure to an open procedure because of extensive adhesions from previous surgery and radiation therapy. The patient's initial post-operative course was unremarkable with no fever, no tachycardia, no excessive fluid requirements. On the eighth postoperative day, the patient complained of increased pain and spiked a fever. Appropriate studies were done, and the patient was emergently taken to the operating room for a perforated viscus and drainage of intra-abdominal fluid collections. The patient has had a prolonged and difficult recovery. Although the patient has had a poor outcome from her surgical procedure, there is no evidence in the medical record of negligent or delayed care.

14. CR 10-566

Dr. Jones moved to dismiss CR 10-566. Dr. Dumont seconded the motion, which passed unanimously.

The complainant alleges the physician did not identify himself and then made a treatment recommendation that she characterized as "predatory." Physicians often have different opinions concerning care for the same problem. This does not mean that one approach to a problem is superior to another. There are alternative ways to treat a problem adequately, as occurred with this young man. Responding to a request for consultation and recommending closed reduction of a fracture under sedation is not a predatory practice, as is alleged by the complainant. It is one of the usual and customary ways to reduce and cast a fracture.

It is difficult for the Board to know what was actually said in the exam room. However, the need for a physician to identify himself and appropriately explain his role in the patient's care is absolutely necessary and is also crucially important in obtaining informed consent. This physician is urged always to introduce himself to patients in the future, explain who he is and why he has been consulted in the patient's care.

15. CR 10-427 JENNIFER A. DIEHL, M.D.

Dr. Hatfield moved to dismiss the complaint against Jennifer A. Diehl, M.D. (CR 10-427) with a letter of guidance. Dr. Jones seconded the motion, which passed unanimously.

The complainant states the physician was unnecessarily rude and hostile at his last office visit, and that the physician did a poor job of keeping track of his medications in the medical record. He complains that the physician stated she would arrange a nephrology appointment, but then did not. He complains that the physician's office notes are not accurate, and points out that the final office note was signed 40 days after the actual visit, well after he had filed this complaint.

The physician responds that the patient had inappropriately changed his thyroid medication more than once without contacting her. She states that at one appointment she had informed the patient she would be unable to tolerate him making further changes in medications on his own; however, she admits that she did not document this, feeling that it was unnecessary. She denies being rude or hostile, and does not recall saying some of the things the complainant claims that she said. She states the nephrology office was to contact the patient for his appointment.

A review of the records shows that the complainant on several occasions changed doses of both his thyroid medication and his blood pressure medication without first asking or informing the physician; this made tracking medications in the record problematic. The patient did see a nephrologist two months after the last visit with the physician. The patient's assumptions about thyroid laboratory testing described in his complaint are incorrect.

The records show poor documentation of the physician's concern over the patient's non-compliance, although it is mentioned briefly in a 2009 note. As well, she signed her final progress note about forty days after seeing the patient. It is not possible for the Board to know if her note is an accurate representation of her visit with the patient on that day.

The Board believes that patients have the ultimate right to make their own healthcare decisions, but feels that patients should work in partnership with their physicians. A physician has the right to discontinue a relationship with a patient if he or she does not feel comfortable taking care of that patient.

A letter of guidance will emphasize the need to document conversations with a patient about any concerns the physician may have, including the patient's feelings or decisions on a particular matter. It will also emphasize the need for timely completion of medical records.

16. CR 10-436

Dr. Gleaton moved to investigate further CR 10-436. Dr. Jones seconded the motion, which passed unanimously.

17. CR 10-498

Ms. Clukey moved to dismiss CR 10-498. Dr. Jones seconded the motion, which passed unanimously.

The patient complains her physician refused to allow her to participate in a treatment program/clinic, stating she was not qualified because she uses medicinal marijuana. The physician responds that the patient was told about a clinical study that might give her further insight into an unusual medical condition. However, she states in order to determine the patient's eligibility for the clinical study, she required her past medical records. The patient was informed of the importance and necessity of her medical records for her assessment and the physician requested her records several times. At the time of the initial evaluation the patient submitted very limited referral records and her medical history was based on the patient's own

reports of her illnesses and her family medical history. The physician states she could continue to assess her for the clinical study, for which she would probably be a good candidate if the patient produces her medical records.

18. CR 10-512

Ms. Clukey moved to investigate further CR 10-512. Dr. Jones seconded the motion, which passed unanimously.

19. CR 10-514

Dr. Dumont moved to investigate further CR 10-514. Dr. Hatfield seconded the motion, which passed unanimously.

20. CR 10-515

Dr. Nyberg moved to dismiss CR 10-515. Dr. Gleaton seconded the motion, which passed unanimously.

The patient complains that the physician, a second year resident, did not listen, was rude, and violated her privacy. The allegations about not listening and being rude are denied by the physician and by his supervisor, who alludes to cultural differences between the patient and the resident and to the resident's relative lack of experience. As to the allegation of privacy violation there is no doubt: the physician misspoke about the patient's condition in front of others who are well known to the patient but have no privilege with regard to the patient's medical information. The breech of confidentiality could have caused serious consequences for the patient. The Board is confident the physician is now well aware of his failure in this instance.

21. CR 10-516

Dr. Nyberg moved to dismiss CR 10-516. Dr. Dumont seconded the motion, which passed unanimously.

The patient, who was pregnant at the time, complains that the physician mishandled her HIV test results, which caused unnecessary concern. The physician replied that she discussed the initial positive test results with the patient, and explained at the same time that pregnancy can be the cause of a false positive, so a follow up test was necessary. That test was ordered and came back negative. This good news was relayed to the patient within two days by the physician's practice partner because the physician herself was out of town. This appears to be a case of an understandably anxious patient's over-reaction to certain aspects of the process. Nothing in the record suggests any misconduct on the physician's part.

22. CR 10-528

Dr. Jones moved to dismiss CR 10-528. Dr. Gleaton seconded the motion, which passed unanimously.

The complaint is dismissed due to lack of information. The Board has sought authorization to obtain medical records multiple times and has not received it. If supplied with medical releases the Board would be willing to reopen this complaint.

23. CR 10-529

Dr. Jones moved to dismiss CR 10-529. Dr. Gleaton seconded the motion, which passed unanimously.

The complaint is dismissed due to lack of information. The Board has sought authorization to obtain medical records multiple times and has not received it. If supplied with medical releases the Board would be willing to reopen this complaint.

24. CR 10-530

Dr. Jones moved to dismiss CR 10-530. Dr. Gleaton seconded the motion, which passed unanimously.

The complaint is dismissed due to lack of information. The Board has sought authorization to obtain medical records multiple times and has not received it. If supplied with medical releases the Board would be willing to reopen this complaint.

25. CR 10-535 BEVERLY A. STOPPS, M.D.

Ms. Clukey moved to dismiss the complaint against Beverly A. Stopps, M.D. (CR 10-535) with a letter of guidance. Dr. Jones seconded the motion, which passed unanimously.

The patient complains the physician failed to inform her of the results of a June, 2009 pap smear, which was abnormal, until October, 2010. The standard office practice requires the physician to inform patients directly regarding abnormal pap smear results. The physician responds by explaining that she developed metastatic endometrial cancer in August, 2009 and took a medical leave until June, 2010. Her lack of communication was a serious oversight. The physician only realized her error when the patient returned for an office visit in October, 2010. At that time, she informed her of the abnormal results and scheduled an appointment with a gynecologist. A physician's medical leave is never a legitimate excuse for lack of patient communication.

The standard office practices were wanting and not followed. The abnormal test results were available prior to the physician's medical leave. As a result, this patient was put at a possible medical risk. The letter of guidance will emphasize physician's lack of communication was unprofessional.

26. CR 10-553

Dr. Hatfield moved to dismiss CR 10-553. Dr. Dumont seconded the motion, which passed unanimously.

The complainants allege that the physician did not appropriately care for the patient during the prenatal period, and they outline several clinical concerns. They also allege that his post-partum treatment of what they feel was recurrent mastitis was inappropriate, and that this physician did not treat the mastitis with antibiotics when others had. They feel he seemed unconcerned when in retrospect there were serious problems during the pregnancy.

The physician replies that his clinical care met and exceeded the standards of care for a high-risk pregnancy with these particular problems. He also states that he did indeed treat with antibiotics for mastitis after seeing the patient, and also after that with antibiotics when the patient called with symptoms of mastitis but was unable to come to the office. After seeing the patient again for multiple recurrences of her symptoms, he found no clinical evidence of mastitis and made a different diagnosis.

Review of the records shows appropriate prenatal clinical care. The physician did indeed treat the patient with antibiotics several times for apparent mastitis.

27. CR 10-555

Dr. Gleaton moved to investigate further CR 10-555. Dr. Jones seconded the motion which passed 7-1-0-0.

28. CR 10-580 KENG-CHEONG LEONG, M.D.

Dr. Dumont to order an Adjudicatory Hearing in the matter of CR 10-580 Keng-Cheong Leong, M.D. Dr. Nyberg seconded the motion, which passed 7-0-0-1 with Dr. Hatfield recused.

29. CR 10-599

Ms. Clukey moved to dismiss CR 10-599. Dr. Dumont seconded the motion, which passed unanimously.

The complainant alleges his physician inappropriately discharged him from his medical practice. He further alleges the physician mixed up refill dates of his medication and stopped his medication without weaning him off it. The physician responds, and the medical charts/notes confirm, that the patient violated his pain management contract twice by coming up short on pill counts and failing a drug screen. The physician gave the patient a one-week supply of his medication after the abnormal drug screen, while waiting for the final results of the urine drug screen. The physician was concerned this patient was abusing his medications or diverting them. Therefore, he discharged him from his practice and recommended he seek help for substance abuse. The quality of documentation in the medical records is commendable and helps support the physician's position.

30. INTENTIONALLY LEFT BLANK

IV. ASSESSMENT & DIRECTION

31. AD 10-407

Dr. Dumont moved to file AD 10-407. Dr. Nyberg seconded the motion, which passed 7-1-0-0.

32. AD 10-569

Dr. Gleaton moved to file AD 10-569. Dr. Dumont seconded the motion, which passed unanimously.

33. AD 10-588 (CR 11-060)

Dr. Gleaton moved to issue a complaint in the matter of AD 10-588 (CR 11-060). Dr. Jones seconded the motion, which passed unanimously.

34. AD 11-001 (CR 11-061)

Dr. Gleaton moved to issue a complaint in the matter of AD 11-001 (CR 11-061). Dr. Hatfield seconded the motion, which passed unanimously.

35. AD 11-012

Dr. Gleaton moved to file AD 11-012. Dr. Jones seconded the motion, which passed unanimously.

36. AD 11-028 (CR 11-062)

Dr. Jones moved to issue a complaint in the matter of AD 11-028 (CR 11-062). Dr. Gleaton seconded the motion, which passed unanimously.

V. INFORMAL CONFERENCE(S)

A. CR 09-545 (AMENDED OFF THE AGENDA)

B CR 10-049

Dr. Gleaton moved to continue the Informal Conference in the matter of CR 10-049. Dr. Dumont seconded the motion, which passed 7-0-0-1 with Dr. Hatfield recused.

C. CR 10-341

Dr. Dumont moved to dismiss CR 10-341. Dr. Nyberg seconded the motion, which passed 7-0-0-1 with Ms. Baxter recused.

This is a Board initiated complaint based on a referral from a law enforcement agency about inappropriate prescribing of narcotics. A review of this case and 4 additional cases shows that the physician was not aware of how frequently his patients were abusing prescriptions and the index case led the physician to change his practice and prescribing habits. An informal conference was held with the physician who clearly recognizes his previous lapses and has made substantial changes in his care of chronic pain patients.

D. CR 10-144

Dr. Jones moved to continue the Informal Conference in the matter of CR 10-144. Dr. Dumont seconded the motion, which passed unanimously.

VI. MINUTES OF JANUARY 11, 2011

Ms. Clukey moved to approve the minutes of January 11, 2011. Dr. Gleaton seconded the motion which passed 7-0-1-0 with Ms. Baxter abstaining.

VII. BOARD ORDERS & CONSENT AGREEMENT MONITORING &AND APPROVAL

A. BOARD ORDERS

1. MITCHELL G. MOFFAT, M.D. [See Appendix A Attached]

Dr. Nyberg moved to approve the Board Order in the matter of Mitchell G. Moffatt, M.D. Dr. Gleaton seconded the motion, which passed 7-0-1-0 with Ms. Baxter abstaining.

B. CONSENT AGREEMENT MONITORING & APPROVAL (NONE)

VIII. ADJUDICATORY HEARING(S) (NONE)

IX. REMARKS OF CHAIRMAN

A. COMMITTEE ASSIGNMENTS (FYI)

X. EXECUTIVE DIRECTOR'S MONTHLY REPORT

The Board accepted the report of the Executive Director.

A. COMPLAINT STATUS REPORT (FYI)

B. POLICY REVIEW – FEES CHARGED THE BOARD FOR PATIENT RECORDS

Dr. Gleaton moved to reaffirm the above policy. Dr. Jones seconded the motion, which passed unanimously.

C. DRAFT POLICIES FOR APPROVAL

1. EMERGENCY LICENSE RECENT CLINICAL EXPERIENCE REQUIRED

The Licensure Committee moved to adopt the Emergency License Recent Clinical Experience Required Policy. The motion passed unanimously.

Review of recent applications causes the Board to be concerned about rapid changes in medical knowledge. Also a licensee granted an Emergency License is qualified to fully practice medicine without restriction.

2. PUERTO RICO MEDICAL EXAMINATION

The Licensure Committee moved to adopt the following the Puerto Rico Medical Examination policy which states: It is the policy of the Board of Licensure in Medicine that it will not accept a passing score on the Puerto Rico medical revalidation examination in lieu of the examination requirements of 32 MRSA, §3271, 3 and Rule Chapter 1, Paragraph 2, 1.

Discussion: The integrity of the Puerto Rico Medical Revalidation Examination has been compromised. On August 1, 2007, the U.S. Drug Enforcement Administration issued a news release regarding the indictment of 88 medical doctors charged in connection with false passing scores in the Puerto Rico medical exam. Further, the Board has traditionally accepted state examinations as acceptable alternatives for older applicants, since those state examinations were the pre-cursor exams to the NBME, FLEX, and then the USMLE examinations. All those state exams or state proctored exams have now been replaced by the USMLE examinations which are universally accepted by every state medical board. The USMLE series is offered in English and includes significant tests for communication and comprehension in English.

The motion passed unanimously.

D. INFORMED PATIENT INSTITUTE – QUALITY OF CARE MEMO (FYI)

XI. MEDICAL DIRECTOR'S REPORT (FYI)

XII. REMARKS OF ASSISTANT ATTORNEY GENERAL

A. FINES FOR REPORTING VIOLATIONS IN CONSENT AGREEMENTS

The Board's legal counsel proposed language to be built into future consent agreements regarding fines for noncompliance.

XIII SECRETARY'S REPORT

A. LIST A

1. M.D. LIST A – APPLICATIONS FOR RATIFICATION

Dr. Jones moved to ratify Dr. Hatfield's approval of the following M.D. license applications. Dr. Dumont seconded the motion, which passed unanimously.

The following license applications have been approved Board Secretary Gary R. Hatfield, M.D. without reservation:

NAME	SPECIALTY	LOCATION
Burns, Sean M.	Anesthesiology	York
Cotroneo, Vincent G.	Diagnostic Radiology	Not Listed
Feliz, Aaron G.	Anatomic & Clinical Pathology	Not Listed
Halderman, James R.	Anesthesiology / Pain Medicine	Not Listed
Ijaz, Ambreen	Internal Medicine	Augusta
Jederlinc, Peter J.	Pulmonary Disease	Lewiston
Kirov-Pancheva, Yana C.	Psychiatry	Lincoln
Knopf, Simon L.	Emergency Medicine	Not Listed
Lentz, Paul J., Jr.	Family Medicine	Augusta
Littlejohn, Frederick C.	Anesthesiology	Bangor
Mendoza, Vinia Madon C.	Internal Medicine	Lewiston
Picciotto, Maurice R.	Psychiatry	Bangor
Riedy, Mark	Internal Medicine	Portland
Taggart, Gregory A.	Orthopedic Surgery	Bangor
Vargas, Donald	Orthopedic Surgery	Not Listed
Vengrow, Michael I.	Neurology	Bangor
Volkert, Janneke A.	Family Practice	Portland

2. P.A. LIST A – APPLICATIONS FOR RATIFICATION

Dr. Dumont moved to ratify Dr. Hatfield's approval of the following Physician Assistant license applications. Dr. Jones seconded the motion, which passed unanimously.

The following Physician Assistant license applications have been approved by Board Secretary Gary R. Hatfield, M.D. without reservation:

Name	License	PSP	Location
Jennifer Drouin, P.A.-C.	Active	Kenneth Morse, M.D.	Bangor
Kristen Hollenkamp, P.A.-C.	Active	Christine White, M.D.	Princeton
Jessie Kitz, P.A.-C.	Active	Cynthia Atkinson, M.D.	Portland
Emily Pally-Appleton, P.A.-C.	Active	Trevor Braden, M.D.	Kittery

B. LIST B – APPLICATIONS FOR INDIVIDUAL CONSIDERATION

1. MATTHEW JACOBSEN, M.D.

The Licensure Committee moved to preliminarily deny the license application of Matthew Jacobsen, M.D. with leave to withdraw because he does not meet the statutory requirements for licensure. The motion passed 7-1-0-0.

2. WILHELMINA J. DeMARCHI, M.D.

The Licensure Committee moved to deny Dr. De Marchi's request for a waiver of the requirement to submit a permanent application after being granted an emergency license. The motion passed unanimously.

3. AHMED A. SHALABI, M.D.

The Licensure Committee moved to approve the license application of Ahmed A. Shalabi, M.D. The motion passed unanimously.

4. MELBOURNE BALDWIN, P.A.-C.

The Licensure Committee moved to approve the license application of Melbourne Baldwin, P.A.-C. The motion passed 5-3-0-0.

5. GARRET BABBS, P.A.-C

The Licensure Committee moved to approve the license application of Garrett Babbs, P.A.-C. The motion passed unanimously.

6. CHARLES C. LAM, M.D.

The Licensure Committee moved to approve all of the proposed Physician Re-Entry Programs put forth by Dr. Lam. The motion passed unanimously.

7. PATRIZIA RICCARDI, M.D.

The Licensure Committee moved to grant the waiver requested and approve licensure for Dr. Riccardi. The motion passed unanimously.

C. LIST C APPLICATIONS FOR REINSTATEMENT (NONE)

D. LIST D WITHDRAWALS

1. LIST D (1) WITHDRAW LICENSE APPLICATION (NONE)

2. LIST D (2) WITHDRAW LICENSE FROM REGISTRATION

Dr. Gleaton moved to approve the withdrawal list. Dr. Jones seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration:

NAME	LICENSE NUMBER
Dillhut, Richard	005617
Hoy, Mccallum R.	016137
Jentzer, John H.	011076
Joseph, Emanuel	018364
Kelley, Colin	015409
Kumaraswami, Rajeshkumar	016440
Luke, Robert	008724
Sobti, Sandeep	017566

E. LIST E – LICENSES TO LAPSE BY OPERATION OF LAW (NONE)

F. LIST F LICENSEES REQUESTING TO CONVERT TO ACTIVE STATUS (NONE)

G. LIST G RENEWAL APPLICATIONS FOR REVIEW

1. VINCENT CALLANAN, M.D.

Dr. Hatfield moved to grant the renewal of Vincent Callanan, M.D. Dr. Gleaton seconded the motion, which passed unanimously.

2. ROBERT MEARNS, M.D.

The Licensure Committee moved to grant an Administrative License to Robert Mearns, M.D. The motion passed unanimously.

H. LIST H PHYSICIAN ASSISTANT SCHEDULE II AUTHORITY REQUESTS FOR RATIFICATION (NONE)

XIV. STANDING COMMITTEE REPORTS

A. ADMINISTRATION, POLICY & RULES COMMITTEE

1. FINANCIAL REPORT

Large IT costs remains the big red flag this year converting to ALMS. We have asked for a financial order for an additional $75,000 to be placed in our budget. We asked for it in

time for the last administration to consider it but we have just learned yesterday that our request was not forwarded. The Division of Administrative and Financial Services decided that for some reason our request for money did not have merit. However, we still need the money. This report shows we have cash reserves of $625,000. We have to have the $75,000 dollars we requested because we have spent $85,000 on ALMS already this year and that was an unbudgeted item for this year. The good news is that we have not yet raised M.D. renewal fees.

2. PERSONNEL ISSUE

Dr. Dumont reported the Administrative Committee met this morning to discuss a personnel matter and directed staff to develop a policy to address the issue.

B. LEGISLATIVE & REGULATORY COMMITTEE (FYI)

C. LICENSURE COMMITTEE (FYI)

XV. BOARD CORRESPONDENCE (FYI)

XVI. FYI

XVII. FSMB MATERIAL

XVIII. OTHER BUSINESS

XIX. ADJOURNMENT 4:02 p.m.

Respectfully submitted,

Jean M. Greenwood

Jean M. Greenwood
Board Coordinator

Appendix A

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Mitchell G. Moffat, M.D.)
Appeal of Denial of Licensure) **DECISION AND ORDER**

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. § 3282-A, *et seq.*, 5 M.R.S. § 9051, *et seq.* and 10 M.R.S. § 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine at 2:00 p.m. on January 11, 2011. The purpose of the meeting was to conduct an adjudicatory hearing to decide whether to grant Mitchell G. Moffat, M.D.'s appeal of the Board's preliminary decision to deny his application for licensure as a Maine physician. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Sheridan Oldham, M.D., Gary R. Hatfield, M.D., George Dreher, M.D., public member David Nyberg, Ph. D., public member Cheryl Clukey, Maroulla S. Gleaton, M.D., David H. Dumont, M.D., and David Jones, M.D. Dr. Moffat appeared without legal counsel. Dennis Smith, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The Board then took administrative notice of its statutes and Rules. State's exhibits 1-32 and Appellant's exhibits A1-A4 were admitted into the Record.[1] Subsequent to the parties' opening statements, the taking of testimony, admission of exhibits, and closing arguments, the Board deliberated and made the following conclusions of law, and findings of fact by a preponderance of the credible evidence.

[1] The following 2 grounds for possible denial of Dr. Moffat's application were added by agreement of the parties to the Notice of Hearing. C. 32 M.R.S. § 3282-A(2)(J): Prescribing narcotic or hypnotic drugs or other drugs listed as controlled substances by the Drug Enforcement Administration for other than accepted therapeutic purposes; D. 32 M.R.S. § 3282-A(2)(M): revocation, suspension or restriction of a license to practice medicine or other disciplinary action by another state if the conduct resulting in the disciplinary action would, if committed in this state, constitute grounds for discipline.

II. FINDINGS OF FACT

1. Mitchell Moffat, 62 years of age, is a resident of Post Falls, Idaho.

2. Dr. Moffat is an emergency room and family practice doctor who was first licensed as a physician in California in 1983. He currently is licensed to practice medicine in Connecticut.

3. Dr. Moffat is currently employed as a *locum tenens* physician with the Indian Health Service at the Norton Sound Hospital in Nome, Alaska.

4. Dr. Moffat submitted an application to the Board for licensure in Maine received on May 29, 2009.

5. The application contained 15 questions primarily regarding whether an applicant has violated laws or standards which would weigh negatively on his character. The appellant answered "yes" to nine of the questions, and was aware of the wording on the form which required "Every 'Yes' response to be fully explained by written statement on a separate 8.5" x 11"sheet of white paper...."

6. Dr. Moffat answered "Yes" to question number 7, but didn't fully explain the circumstances since he failed to mention that he had illegally obtained more than 1000 drugs, or that he had prescribed them for his addicted brother-in-law, or that the pills were equally divided between the two of them. Those facts were also missing from Dr. Moffat's 5 page timeline which is in evidence.

7. The Board, in its September 11, 2009 letter to Dr. Moffat, notified him that it had preliminarily denied his application based on the following past behavior, each example of which constitutes grounds for the Board to refuse to issue a medical license.

A. 32 M.R.S. § 3282-A(2)(B): by engaging in habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.

B. 32 M.R.S. § 3282-A(2)(F): by engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine by: issuing fraudulent prescriptions for narcotic drugs; dispensing narcotic drugs to his brother-in-law without a valid physician-patient relationship or without a legitimate medical purpose; prescribing and/or dispensing narcotic drugs for his own personal use; and the revocation of his hospital privileges at the Naval Hospital, Camp Pendleton.

C. 32 M.R.S. § 3282-A(2)(J): Prescribing narcotic or hypnotic drugs or other drugs listed as controlled substances by the Drug Enforcement Administration for other than accepted therapeutic purposes.

D. 32 M.R.S. § 3282-A(2)(M): revocation, suspension or restriction of a license to practice medicine or other disciplinary action by another state if the conduct resulting in the disciplinary action would, if committed in this state, constitute grounds for discipline.

8. The above transgressions were admitted to by Dr. Moffat whose beginning history of alcohol and drug abuse can be traced at least to 1967.

9. The habitual substance abuse occurred while serving as a medical officer at Camp Pendleton, California. Dr. Moffat received in-patient treatment for alcoholism and last consumed alcohol on June 25, 1985. He was discharged from the Navy in May 1986. The appellant also stopped using illegal drugs on June 25, 1985 but resumed his habit in late 2001.

10. Dr. Moffat attended Alcoholics Anonymous meetings twice per week from May 1988 until 1994.

11. At some time in the year 2000, Dr. Moffat received a 2 week suspension from his employment at W.W. Backus Hospital emergency room and was required to take a one-day re-education seminar in "Post-Modern Multiculturalism and Diversity." This disciplinary sanction arose when he asked a pregnant non-English speaking patient through her interpreter why she didn't speak English. She in turn questioned why he didn't learn Spanish. He then replied: "Because this is my f-----g country, and we speak English here." The patient refused further treatment and eventually a formal complaint was issued against the hospital.

12. In late 2001, Dr. Moffat began his use of narcotics. He convinced his addicted brother-in-law to agree with a plan whereby Dr. Moffat would write a prescription for Tramadol for his brother-in-law who would then get the drug and share ½ with Dr. Moffat. This lasted until June 2006 when Dr. Moffat self-detoxed at home and also at the inpatient unit at the Betty Ford Clinic in California.

13. Dr. Moffat commenced attending AA meetings on a regular basis in September 2006. He also was subject to twice-weekly urine screens, quarterly meetings with his psychiatrist, and weekly Caduseus meetings. Currently, he attends AA meetings, is assessed by his psychiatrist on a quarterly basis, and is subject to weekly urine screens which have been negative.

14. Dr. Moffat returned to work at W.W. Backus on November 3, 2006 but resigned after a few days to work on his recovery. He remained unemployed until May 2007.

15. On March 20, 2007, a formal felony charge described by the appellant as "Prescription Fraud" was issued against Dr. Moffat in Connecticut for writing illegal narcotics prescriptions for his addicted brother-in-law and himself involving more than 1,000 pills. He received a suspension of the charges which authorized them to be expunged including all related criminal proceedings if Dr. Moffat followed his recovery plan for 2 years. Those records were, in fact, expunged on August 14, 2009.

16. On November 20, 2007, Dr. Moffat became the subject of a Connecticut Consent Order whereby he agreed, among other things, to participate in a monitoring program. Of further interest in this document is the list of the charges which lead to Dr. Moffat's arrest in addition to "Prescription Fraud." More accurately, he apparently was also arrested for "illegally prescribing **and dispensing** controlled substances including oxycontin, endocet, percocet, and oxycodone." The court records also reveal that Dr. Moffat was charged with Failure to Keep Records, Insurance Fraud, and Sale of Certain Illegal Drugs. Despite these charges, the appellant at this hearing mentioned only the prescription fraud charge and neglected to name the illegally prescribed drugs except for Tramadol.

17. On December 1, 2007, the state of Connecticut re-activated his medical license.

18. Dr. Moffat was hired by the North Idaho Medical Care Center on July 24, 2008.

19. On October 28, 2008, the Connecticut Consent Order was amended to allow out-of-state monitoring for the Appellant.

20. Dr. Moffat on December 1, 2008, began his participation in the Network Physician Recovery Program (Recovery Program) in Idaho which included eight to ten 12-step meetings per month, regular meetings with overall peer/worksite monitor, regular meetings with a psychiatrist, urine screens, etc.

21. Appellant Moffat was issued an Idaho Medical License in January 2009 and began working fulltime at North Idaho Medical Care Center in several Idaho locations.

22. Dr. Moffat subsequently complained regarding the requirement that he attend weekly meetings of the Recovery Program. He then was allowed to begin participation in January 2009 in the Washington Physician Health Program (WPHP) in Spokane, Washington, which was more convenient.

23. On September 21, 2009, Dr. Moffat requested that he only attend one meeting per month in Spokane.

24. During November 2 and 3, 2009, this request was denied in that a new contract offered to the appellant still required one meeting per week. Dr. Moffat then amended the proposed contract to suit his needs and sent it back. He then agreed to attend one more regular meeting and thereafter proceed as if his amendment had been agreed to by the Recovery Program.

25. On November 4, 2009, Dr. Moffat informed the Recovery Program that he had a job offer in Alaska and proposed his own schedule to comply with the Idaho Recovery Program.

26. On November 16, 2009, Dr. Moffat was referred back to the Idaho Recovery Program since he allegedly "has not bonded with the group members and expresses the problems of his life as the action of others. His attendance at the weekly groups appears to be an inconvenience, and his participation is not helpful to the group..."

27. On November 23, 2009, the clinical director of the Washington PHP wrote to Dr. Moffat and explained that "You have expressed your unhappiness or resentment for having to attend these groups...and we do not want our groups exposed to a participant that is not able to work out the resentments associated with their disease and consequences..."

28. Dr. Moffat responded in a long e-mail which assessed blame for the failure of his relationship with the programs as mostly their fault. For example, he stated that "I fully expect that the stigmata which PRN and WPHP have attached to me ...will forever remain a bad odor in my record." He added that he tried to educate the group in his assumed role as mentor but his "efforts were consistently rebuffed, undermined, and even ridiculed, being perceived, I can only assume, as challenges to the therapist." He went on to add that I "found myself an instigator, a hothead, a malcontent and a foe of AA," and gave his opinion that the therapist felt his authority was undermined. He admitted that his own actions had a deleterious effect on the group and that he should have made a stronger effort to be in a more advanced group.

29. On December 7, 2009, the Idaho Board was informed by the Recovery program that Dr. Moffat was out of compliance since he was expelled from the Washington PHP and further that the Idaho Recovery Network could not support Dr. Moffat's acceptance of the Alaska position based on the Washington experience. Dr. Moffat accepted the position anyway, and the Board offered a Consent Order for Dr. Moffat to permanently surrender his Idaho license.

30. Connecticut, meanwhile, had agreed to reassume the responsibility for overseeing Dr. Moffat's rehabilitation which would keep him in compliance with the terms of his Connecticut license.

31. Dr. Moffat therefore permanently surrendered his Idaho license. He signed the Consent Order effective February 10, 2010, but wrote in his Maine application that the "surrender was an administrative technicality, only...," which disregards his conduct as the real reason for the surrender.

32. When Dr. Moffat submitted his curriculum vitae into evidence in this proceeding, the fact that he surrendered his Idaho license was not mentioned. He merely stated "Previously licensed in California and Idaho."

33. Dr. Moffat represented in the timeline which he submitted to the Board that he had been offered employment as a physician in Dover-Foxcroft, Maine at the Mayo Hospital. That assertion was untrue.

III. CONCLUSIONS OF LAW

The Board, based on the above evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee's demeanor, voted 7-1 to deny Mitchell Moffat, M.D.'s appeal and therefore his application for licensure.

The licensure denial was not due to any lack of practice skills. Additionally, several of Dr. Moffat's fellow staff members at the Norton Sound Hospital wrote letters in glowing terms in support of his application. However, the Board was particularly disturbed that Dr. Moffat, as noted in several of the above paragraphs, was not forthright regarding his past conduct. Additionally, he testified that he had "nothing to hide," yet did not divulge relevant, significant information regarding his application. He stated that he got along with everyone, yet the evidence demonstrated that he used foul language to the pregnant patient who did not speak English and also voiced his disdain for the other participants in the Washington PHP.

"The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose." The Board found it clear that Dr. Moffat was neither honest nor trustworthy.

Dated: February 8, 2011

Sheridan Oldham, MD

Sheridan Oldham, M.D., Chairman
Maine Board of Licensure in Medicine

IV. APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. § 10051.3 and 10 M.R.S. § 8003 (5)(G) and (5-A), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.